means, to present any defense that the law of the land permits." See also SHARSWOOD, PROFESSIONAL ETHICS, 5 ed., 90–92. This, of course, does not justify any positive obstruction of justice. *In re Billington*, 156 App. Div. 63, 141 N. Y. Supp. 16; *In re Lane*, 93 Minn. 425, 101 N. W. 613. Generally, it is the duty of a lawyer to divulge the truth, even though this should be damaging to his client. *People* v. *Beattie*, 137 Ill. 553, 27 N. E. 1096; *In re Schapiro*, 144 App. Div. 1, 128 N. Y. Supp. 852. See KINKEAD, JURISPRUDENCE, LAW, AND ETHICS, 329. But see WARVELLE, ETHICS, § 170. Just how far this rule applies in a criminal case, is a difficult question. There is certainly no duty to disclose a confession. See *Courvoisier's Case*, Appendix to SHARSWOOD, PROFESSIONAL ETHICS, 5 ed., 183. But an attorney who knowingly adopts false testimony as true, perpetrates a fraud upon the court, and this would seem to be improper, even in a criminal case. Some courts have attempted to establish definite rules, as to what conduct will justify disbarment. *In re Cahill*, 66 N. J. L. 527, 50 Atl. 119. Clearly, it is not necessary that the lawyer shall have committed a crime. *In re Hardenbrook*, 135 App. Div. 634, 121 N. Y. Supp. 250. Tested by precedent, the punishment in the principal case seems unusually severe. *In re Newman*, 158 App. Div. 471, 143 N. Y. Supp. 590. *Cf. In re Cahill*, *supra*. But precedent is of little value on such a question. The punishment to be given should depend upon the particular facts of each case, and must rest largely in the discretion of the court. See *In re Attorney*, 10 App. Div. 491, 513, 42 N. Y. Supp. 268, 282.

BANKRUPTCY — DISCHARGE — DEBTS NOT AFFECTED — WILFUL AND MALICIOUS INJURY TO PROPERTY. — A broker held stock of a customer as security for the latter's indebtedness. The broker wrongfully sold the stock and appropriated the proceeds. Later he was adjudicated bankrupt and received a discharge. The customer sues for the conversion, claiming that it was a wilful and malicious injury to his property and hence was not discharged. *Held*, that the customer may recover. *McIntyre* v. *Kavanaugh*, 242 U. S. 138.

The present Bankruptcy Act includes among the debts not barred by a discharge those created by a misappropriation while acting in a fiduciary capacity. BANKRUPTCY ACT, § 17 *a* (4). The Acts of 1841 and 1867 also contained this provision. It was held under the Act of 1841 that "fiduciary" meant express trust and that therefore a principal's claim against his factor was not discharged. *Chapman* v. *Forsyth*, 2 How. (U. S.) 202. Similarly, under the Act of 1867 brokers as well as factors and commission merchants were considered not to be fiduciaries. *Hennequin* v. *Clews*, 111 U. S. 676. Accordingly, when the present Act went into effect the courts felt bound to follow the established course of decisions on this point, and hold that a broker was not discharged under § 17 *a* (4). *Crawford* v. *Burke*, 195 U. S. 176, 189. However, the present Act denies a discharge also of liabilities for wilful and malicious injuries to property. BANKRUPTCY ACT, § 17 *a* (2). The attitude of the courts under 17 *a* (4) had been one of tenderness toward the bankrupt, as is evidenced by the decisions just alluded to. The lower federal courts, following the same policy under § 17 *a* (2), decided that a conversion was not a "wilful and malicious" injury. *Matter of Ennis & Stoppani*, 171 Fed. 755. The state courts, however, seemed to take the opposite view. *Kavanaugh* v. *McIntyre*, 210 N. Y. 175, 104 N. E. 135; *Hallagan* v. *Dowell*, 139 N. W. 883 (Iowa). See COLLIER, BANKRUPTCY, 10 ed., 395. And the Supreme Court several years ago decided that "malicious" does not connote any evil motive toward the injured party. *Tinker* v. *Colwell*, 193 U. S. 473, 485. That decision paved the way for the holding in the principal case — that the conversion by the broker was a malicious injury to property. This construction not only shows a much stricter attitude toward the bankrupt, but also goes so far as to be questionable, for the requirement of malice would ordinarily not be found in the unjustifiable appropriation of the property of another and

would require actual ill will toward the person injured. *Matter of Ennis & Stoppani, supra.* The actual decision in the principal case, however, seems desirable; and the liberal construction of 17 *a* (2) may perhaps be justified as being necessary to counteract the results of too strict a construction of 17 *a* (4).

BANKRUPTCY — PREFERENCES — JUDGMENT, LEVY AND SALE WITHIN FOUR MONTHS OF BANKRUPTCY. — A creditor with reasonable cause to believe the debtor insolvent procured a judgment against him, levied execution and received the proceeds of the execution sale, all the steps occurring within four months of the filing of the petition in bankruptcy. The trustee in bankruptcy sued the creditor for the amount realized from the sale. *Held*, that the trustee may recover. *Anderson* v. *Stayton State Bank*, 38 Am. B. Rep. 4.

For a discussion of the principles involved, see NOTES, p. 619.

BANKRUPTCY — PREFERENCE — RETURN BY BROKER TO CUSTOMER OF STOCK REDEEMED FROM A PLEDGEE. — A customer loaned stock to his broker with authority to pledge. The broker did pledge for his own purposes and within four months of bankruptcy and while insolvent used his own funds to redeem the stock and returned it to the customer. The trustee in bankruptcy of the broker claimed that the transaction was preferential. *Held*, that no preference was effected. *Robinson* v. *Roe*, 233 Fed. 936 (C. C. A., 2nd Circ.).

The court bases its decision on the ground that the customer was merely reacquiring property to which he always had an exclusive property right. If this were the fact, of course he received no preference; but by authorizing the broker to pledge, his interest became encumbered to the extent of the pledgee's claim. Now if the customer was a creditor when the stock was redeemed and returned to him, he has received a preference. BANKRUPTCY ACT, § 60 *a*. A creditor is defined as one owning a claim provable in bankruptcy. BANKRUPTCY ACT, § 1, sub-sec. 9. Although tort claims are not ordinarily provable, the victim of a conversion of personal property may waive the tort and prove on the theory of implied contract. *Crawford* v. *Burke*, 195 U. S. 176. Hence, if the broker had been guilty of a conversion of the stock, the customer would have had a provable claim and satisfaction thereof by a redemption, and return of the converted stock would be preferential. But there has been no conversion in the principal case inasmuch as there was no unqualified demand for a return. However, even if there was no present obligation to redeem and return the stock, there was at least a contingent claim on the part of the customer, contractual in its nature, and becoming absolute on the customer's election to require his property. If this claim is provable, its satisfaction is preferential. It has been decided that on the bankruptcy of the principal, a surety has a provable claim even before he has in any way discharged the debt. *Williams* v. *U. S. Fidelity and Guaranty Co.*, 236 U. S. 549. And quite recently the Supreme Court has held that a party to a bilateral contract, still largely executory, may prove for the value of the entire contract against the estate of the other contracting party. *Central Trust Co.* v. *Chicago Auditorium Ass'n*, 240 U. S. 581. But see *In Re Imperial Brewing Co.*, 143 Fed. 579. Hence it is submitted that the necessary elements of a preference are present in the case under discussion. Furthermore it seems immaterial whether the customer loans property to the broker to be pledged, as here, or whether the original transaction was a pledge with power to repledge. It has been decided by the Supreme Court that a pledgor who takes back stock under circumstances identical with those of the principal case does not receive a preference. *Richardson* v. *Shaw*, 209 U. S. 365. The same reasons rendering the case under discussion open to criticism apply likewise to such a case.

BANKRUPTCY — PROPERTY PASSING TO THE TRUSTEE — LIFE INSURANCE POLICIES: IN GENERAL. — One Samuels had insured his life in favor of a third person, reserving power to change the beneficiary. The policy had a cash sur-